



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

P.M.

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/098,606	03/15/2002	Daniel Tuse	00801.0191.NPUS01	7669
25871	7590	06/29/2004	EXAMINER	
SWANSON & BRATSCHUN L.L.C. 1745 SHEA CENTER DRIVE SUITE 330 HIGHLANDS RANCH, CO 80129			MAHATAN, CHANNING	
		ART UNIT	PAPER NUMBER	
		1631		
DATE MAILED: 06/29/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/098,606	
Examiner	TUSE, DANIEL	
Channing S Mahatan	Art Unit 1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 12 March 2004.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-33 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) \_\_\_\_\_ is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) 1-33 are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

*EXAMINER COMMENT*

Applicant's election without traverse of Group III in the reply filed on 12 March 2004 is acknowledged. However, a new 'Restriction/Election Requirement' is set forth below, wherein the previous 'Restriction/Election Requirement' (mailed 09 February 2004) inadvertently placed claims 4-33 (dependent on claim 1) with claim 3. Therefore, in order to correct the record of prosecution and to provide Applicant with ample opportunity to review and elect an invention the below 'Restriction/Election Requirement' (regrouped) is provided for below. An attempt was made to notify Applicant's Representative, Darla G. Yoerg, of the new 'Restriction/Election Requirement' on 24 June 2004, however, Ms. Yoerg was out of the office.

**Restriction/Election Requirement**

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

- I. Claims 1 and 4-33, drawn to a method of compiling a function gene profile of a donor organism, classified in class 702, subclass 19.
- II. Claim 2, drawn to a method of identifying the sequence of an antigen of a pathogen, classified in class 435, subclass 6.
- III. Claim 3, drawn to a method of identifying the sequence of an antigen of a cancer cell, classified in class 435, subclass 6.

The inventions are distinct, each from the other because:

Inventions of Groups I, II, and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (M.P.E.P. § 806.04, M.P.E.P. § 808.01). In the instant case the different inventions are directed to methods having

different functions, different effects, and different modes of operation. The function(s)/mode of operation of Group I is to compile a functional gene profile of the host or of the donor organism. The function(s)/mode of operation of Group II is to identify the sequence of the antigen of the pathogen. The function(s)/mode of operation of Group III is to identify the sequence of the antigen of the cancer cell. Thus, Groups I, II, and III have different functions, different effects, and different modes of operation.

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art because of their recognized divergent subject matter and the search for required for each Group is not required for the other Group(s), restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R. § 1.143).

*EXAMINER INFORMATION*

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 C.F.R. § 1.6(d)). The CM1 Fax Center number is either (703) 872-9306.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Channing S. Mahatan whose telephone number is (571) 272-0717. The Examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward, Ph.D., can be reached on (571) 272-0722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify Applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables Applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Date: *June 24, 2004*  
Examiner Initials: *CGL*

*Marianne P. Allen*  
**MARIANNE P. ALLEN**  
**PRIMARY EXAMINER** *6/25/04*  
*441634*